

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

VOGT PROPERTIES, INC.,

Plaintiff,

VS.

PHILADELPHIA INDEMNITY
INSURANCE COMPANY,

Defendant.

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CASE NO. 4:17-cv-506

DEFENDANT PHILADELPHIA INDEMNITY INSURANCE
COMPANY'S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to 28 U.S.C. §§ 1332, 1441(b) and 1446(a), **Philadelphia Indemnity Insurance Company**, a Defendant in the above-styled case, files this Notice of Removal from the District Courts of Collin County, Texas, 380th Judicial District, to the United States District Court for the Eastern District of Texas, Sherman Division.

INTRODUCTION

1. The Plaintiff is Vogt Properties, Inc. ("Plaintiff").
2. The Defendant is Philadelphia Indemnity Insurance Company ("Defendant").
3. Plaintiff commenced this first-party insurance case on June 13, 2017. See Pl.'s Original Petition, attached as part of **Exhibit 5**. Plaintiff has asserted causes of action against arising under Texas law against Defendant for allegedly breaching the insuring agreement, violating various provisions of chapters 541 and 542 of the Texas Insurance Code, and negligence.

4. Plaintiff obtained service of process upon Defendant on June 20, 2017. *See* “Service of Process Transmittal” and envelope by which Plaintiff’s Original Petition was mailed to Defendant’s designated agent for service, true and correct copies of which are attached as **Exhibit 6**. Defendant is therefore timely filing this Notice of Removal, as Defendant is removing this action “within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.” 28 U.S.C. § 1446(b)(3).

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5. Pursuant to 28 U.S.C. § 1441(a), this action may be removed to this Court because it is the district and division embracing Collin County, Texas, the county in which the state court action is pending.

BASIS FOR REMOVAL

6. This is a civil action that falls under the Court’s original jurisdiction pursuant to 28 U.S.C. § 1332(a) and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446.

A. Complete Diversity of Citizenship Exists.

7. The “forum-defendant” rule provides that a civil action may not be removed to federal court on the basis of diversity of citizenship jurisdiction “if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b)(2).

8. Plaintiff is a Texas corporation with its principal place of business in Texas. *See* Pl.'s Orig. Pet. ¶ 2, at 1 (alleging that Plaintiff "is a domestic corporation and a resident at 720 Preston Trace, Frisco, TX 75033, Collin County, Texas.") (included as a part of **Exhibit 5**).

9. Defendant is a corporation organized and existing under the laws of the State of Pennsylvania. *See* Pl.'s Orig. Pet. ¶ 3, at 1 (identifying Defendant as "a Pennsylvania corporation"); *see also* Affidavit of Eugene Angiolillo, attached as **Exhibit 1** (attesting to the facts that Defendant is incorporated in and maintains its principal place of business in Pennsylvania. *See id.*

B. The Amount in Controversy Exceeds \$75,000.

10. Plaintiff's Original Petition alleges the following: "Pursuant to Texas Rule of Civil Procedure 47, Plaintiffs seek monetary relief of-between \$200,000 and \$1,000,000." Pl.'s Orig. Pet. ¶ 6, at 2.

11. Plaintiff therefore seeks damages, exclusive of interest and attorney's fees, in excess of the jurisdictional minimum of \$75,000.

C. Removal Is Appropriate Under the Court's Diversity Jurisdiction.

12. In light of these facts, the state court claim may be removed to this Court because: (i) this action is a civil action pending within the jurisdiction of the United States District Court for the Eastern District of Texas; (ii) none "of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought", 28 U.S.C. § 1441(b)(2); and (iii) the amount allegedly in controversy exceeds \$75,000, exclusive of interests and costs.

FILING OF REMOVAL PAPERS

13. Pursuant to 28 U.S.C. § 1446(d), Defendant is providing written notice of the filing of this Notice of Removal to all other counsel of record. Further, Defendant is filing a copy of this Notice of Removal with the Clerk of the 380th Judicial District Court of Collin County, Texas, the court in which Plaintiff commenced this action.

14. Defendant is filing the following items concurrently with this Notice of Removal, or attaching them to this Notice of Removal as required by Eastern District of Texas Local Rule CV-81, as amended by General Order 15-12:

- (1) a list of all parties in the case, their party type (*e.g.*, plaintiff, defendant, intervenor, receiver, etc.) and current status of the removed case (*e.g.*, pending, dismissed) (**Exhibit 2**);
- (2) a civil cover sheet JS-44 (**Exhibit 3**) and certified copy of the state court docket sheet (**Exhibit 4**); a copy of all pleadings that assert causes of action (*e.g.*, complaints, amended complaints, supplemental complaints, petitions, counter-claims, cross-actions, third party actions, interventions, etc.) (part of **Exhibit 5**); all answers to such pleadings (part of **Exhibit 5**); and a copy of all process and orders served upon the party removing the case to this court as required by 28 U.S.C. § 1446(a) (**Exhibit 6**);
- (3) a complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone number, and party or parties represented by him/her (**Exhibit 7**);
- (4) a record of which parties have requested trial by jury (this information is in addition to filing a separate jury demand pursuant to Local Rule CV-38(a)) (**Exhibit 8**); and
- (5) the name and address of the court from which the case is being removed (**Exhibit 9**).

CONCLUSION

15. Defendant gives notice to the Court of their removal of the above-captioned action from the 380th Judicial District Court of Collin County, Texas, and request that further proceedings be conducted in the United States District Court for the Eastern District of Texas, Sherman Division, as provided by law.

Dated: July 19, 2017

Respectfully submitted,

/s/ William R. Pilat

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CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2017, a true and correct copy of the foregoing pleading was forwarded to all other counsel of record, as listed below, through the electronic case filing system of the United States District Court for the Eastern District of Texas:

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/s/ William R. Pilat
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